CLTA CONFERENCE

Possible Futures for the Company and for Corporate Law

Auckland, New Zealand | 3 - 5 February 2019

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THE UNIVERSITY OF AUCKLAND Te Whare Wānanga o Tāmaki Makaurau NEW ZEALAND

AUCKLAND LAW SCHOOL

CLTA Corporate Law Teachers Association

Contents

Welcome to the CLTA Conference

3 – 5 February 2019
University of Auckland

Tēnā tātou katoa.

Welcome to Auckland and New Zealand, and to the 2019 Corporate Law Teachers Association conference hosted this week by the Auckland Law School. It is not just the first time that the conference has been held in Auckland but the first time a New Zealand University has hosted the conference.

The theme of this year's conference is **Possible Futures for the Company and for Corporate Law**. As the first twenty years of the new millennium come to an end, it is apparent the only certainty is change. And the pace of change is accelerating. To those of us who focus on the modern company and corporate law, the central relevance of the corporation in finding answers to the grand questions of our time is apparent.

Our programme of stellar plenary speakers will focus on aspects of that theme. Our keynote speaker Professor Luca Enriques (Oxford University) will speak on Putting Technology to Good Use for Society: the role of corporate, competition and tax law. In our second plenary session Justice Susan Glazebrook from the New Zealand Supreme Court will focus on the future of corporate governance. And in our third session Te Pae Hihiri Māori Governance – Navigating the future three panellists drawn from the judiciary and business will speak about the experiences and approaches to governance taken by Māori. We are grateful to our plenary speakers for agreeing to present what we know will be thought provoking and highly topical addresses. In addition our teaching session Company law teaching on trial is a presentation of a key findings from a ground breaking longitudinal study on student experience by colleagues at Canterbury Law School.

Putting together a three day conference involves commitment and work from a group of people over a long period of time. There will be an opportunity to thank those people during the conference, but I would like to acknowledge in particular the sterling contributions made by colleagues Sarah Davidson from Auckland Law School and Professor Lynne Taylor from Canterbury Law School.

Corporations matter in the world! We are here to discuss some of the grand questions of our time. But the CLTA conference is also a highlight of the year because it is an opportunity to spend time with a highly collegial group of academics, and for people to visit a new place. When Rudyard Kipling visited New Zealand in his travels, he was moved to describe it as ""last, loneliest, loveliest, exquisite, apart." To our visitors a special welcome – we are delighted that you have been able to come and we hope that while you are here you take the opportunity to see Aotearoa New Zealand.

Haramai rā, Haramai

Professor Susan Watson

Auckland Law School

General Information

Guest Wifi Details

Go into settings on your phone, tablet or laptop and select the wireless: UoA-Guest-WIFI, then enter the following details.

Username: eden@wifi.com

Password: gC52prEV

Name Tags

Please wear your name tag at all times during the conference events. You will need your name tag to enter the Conference dinner.

Catering

Lunch, morning and afternoon teas will be served. See the main conference programme for venue details.

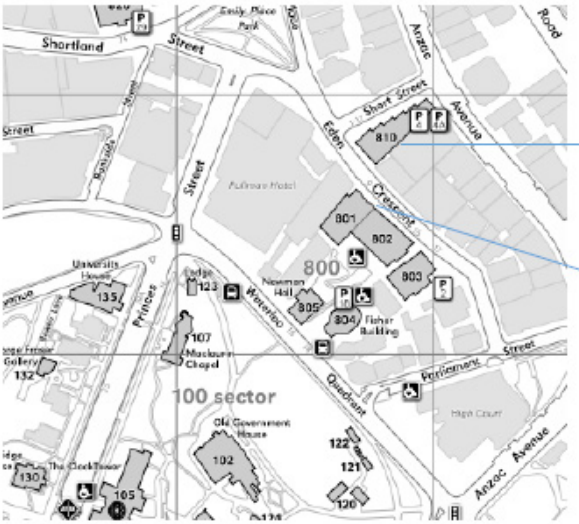
Dietary requirements

Vegetarian options are provided with each meal break. Care has been taken to ensure all advised dietary requirements are catered for.

Volunteers

We are fortunate to have some enthuastic Corporate Law students who have volunteered their time to help out at the conference. They will be there to assist with setting up of presentations and also to assistant with queries that might come up during the day.

Conference Map

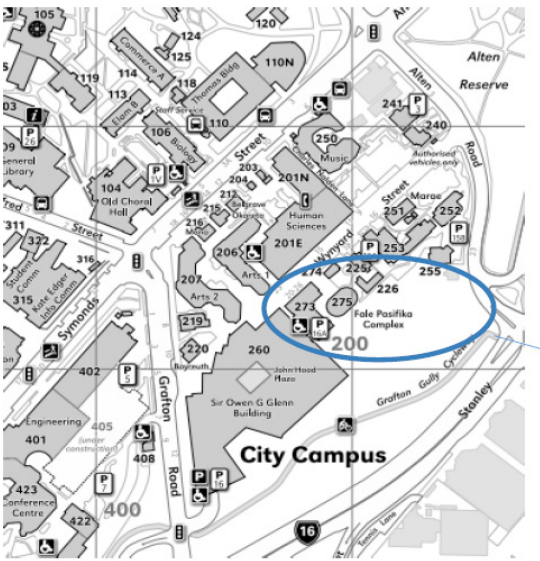


Building 810
1 – 11 Short Street,
Level 3

Building 801, 9 Eden
Crescent, Level 2

Fale Pasifika

There will be a conference dinner held on Monday 4 February at the Fale Pasifika. Designed in the village style, the Fale symbolises a centre of intellectual debate and talanoa



Fale Pasifika

20 Wynyard Street,
City Campus

Social Programme

Sunday 3 February

12.00	**Registration opens** **Auckland Law School, 9 Eden Crescent, Building 801, Level 4, Room 4.09**
14.00	**Algie Lecture Theatre, 9 Eden Crescent, Building 801, Level 2** **Professor Lynne Taylor & Associate Professor John Caldwell, University of Canterbury** This session will run in two parts. Come and hear, first, John Caldwell and Lynne Taylor presenting key findings from a longitudinal study funded by the Ako Aotearoa National Centre for Excellence in Tertiary Teaching and focusing on the learning and teaching experiences of law students at four New Zealand law schools. Then, participate in a discussion as to how company law teachers might use the findings to improve the learning and teaching experiences of the students in their courses.
16.00	**Cocktail Function** Auckland Law School, 9 Eden Crescent, Building 801, Level 4, Room 4.09

Monday 4 February

9.00	**Formal Conference Opening** **Algie Lecture Theatre, 9 Eden Crescent, Building 801, Level 2** **Professor Susan Watson, Conference Convenor** **Professor Warren Swain, Acting Dean of Law**
9.30	**Plenary Session** **Putting Technology to Good Use for Society: the role of corporate, competition and tax law.** **Professor Luca Enriques, University of Oxford**
11.00	**Morning Tea**
11.30	**Parallel Session 1 - Building 810, 1 -11 Short Street, Level 3**
13.00	**Lunch** **Book Launch of Corporate Law in New Zealand - Building 810, 1 -11 Short Street, Level 3** **Launched by Justice Susan Glazebrook**
14.00	**Plenary Session** **Algie Lecture Theatre, 9 Eden Crescent, Building 801, Level 2** **Adapting to change: The Future of Corporate Governance** **Justice Susan Glazebrook** Justice Susan Glazebrook was appointed to the High Court in 2000, to the Court of Appeal in 2002 and to the Supreme Court in 2012. In 2014, she was awarded the DNZM (Dame Companion of the New Zealand Order of Merit) for services to the judiciary. She is currently the President-Elect of the International Association of Women Judges. Before her elevation to the Bench, Justice Glazebrook was a partner in a large commercial law firm, specialising in tax and finance law. She also served on a number of boards and government committees. In 1998 Justice Glazebrook was the President of the Inter Pacific Bar Association, an organisation of business lawyers in the Asia-Pacific region.
15.30	**Afternoon Tea**
16.00	**Parallel Session 2 - Building 810, 1 -11 Short Street, Level 3** **Tribute to Bob Baxt - Building 801, Level 3 Seminar Room 326** **(This is being held as a parallel session and will be filmed)**
19.00	**Dinner at the Fale Pasifika**

Tuesday 5 February

9.00	**Plenary Session** **Panel Session – Te Pae Hihiri Māori Governance – Navigating the future** **Judge Layne Harvey, Mavis Mullins and Brian Tunui**
10.30	**Morning Tea**
11.00	Parallel Session 3 Building 810, 1 -11 Short Street, Level 3
12.30	**Lunch**
13.00	Corporate Law Teachers Association AGM Algie Lecture Theatre, 9 Eden Crescent, Building 801, Level 2
14.00	Parallel Session 4 Building 810, 1 -11 Short Street, Level 3
15.30	**Afternoon Tea**
16.00	Parallel Session 5 Building 810, 1 -11 Short Street, Level 3

Parallel Session, Building 810, 1-11 Short Street, Level 3
Monday 4 February

Parallel Session 1

Time	Seminar Room 326	Seminar Room 332	Seminar Room 336	Seminar Room 340
	Directors & Officers	**Veil piercing & vicarious liability**	**Banking & Financial Services**	**Cross-Border Issues**
11.30	Directors and Corporate Opportunities Chair: Ellie Chapple	Piercing the corporate veil to reach the money: why, how and where to next?	The professional standards of Insurance Intermediaries: A Trans-Tasman Analysis	Cross-Border M&As in Australia, New Zealand and India: A Comparative Analysis
	Rosemary Langford	**Helen Anderson**	**Robin Bowley**	**Alvin Tiwari**
12.00	Possible futures for the Registered Company Auditor in the Corporations Act and beyond Chair: Beth Nosworthy		Whither customer protection in financial services? From caveat investor to fiduciary plus (via duties of fairness, care and good faith)	Aus-India Securities Markets Bilateral Cooperation within the Indo-Pacific Region
	Chris Symes		**Scott Donald**	**Sonia Khosa**
12.30	Responsibilities within the Governance Space: A study of the role of the company secretary on contemporary boards	Kuwait Revisited	Consumer Trust in Retail Banking – Is it Different?	Choice Equality Foundation of Choice of Law and Corporations
	Robyn Trubshaw	**Julie Cassidy**	**Tracey Mylecharane**	**Sagi Pearl**

Parallel Session 2

Time	Seminar Room 326	Seminar Room 332	Seminar Room 336	Seminar Room 340
	Bob Baxt Tribute	**Corporate Governance**	**Insolvency**	**State owned corporations**
16.00	The Bob Baxt Tribute will be filmed.	Institutional Shareholders and Non-Executive Directors: Divergent Gatekeepers in the Pursuit of Effective Corporate Governance Chair: Vicky Comino	The past, present and future of corporate rescue laws	State-owned enterprises in a kleptocracy: the Malaysian Regulatory Framework
		Ronan Feehily	**Jason Harris**	**Vivien Chen**
16.30		Directors' Duties and Stakeholder Interests: A convergence towards a common law "enlightened shareholder value model?	Directors' Duties on Insolvency in New Zealand: An Empirical Analysis	Possible future for the company and corporate law: China's rise is through a form of state owned or controlled corporation: What are its ramifications?
		Lance Ang	**Lynne Taylor**	**Steven Stern**
17.00	The Public Sector Duty of Care	The components of corporate governance for financially distressed companies	Schemes of Arrangement in Singapore: Empirical and Comparative Analyses	
	Dr Ben Saunders	**Chris Symes & Beth Nosworthy**	**Casey Watters**	

Parallel Session, Building 810, 1-11 Short Street, Level 3
Tuesday 5 February

Parallel Session 3

Time	Seminar Room 326	Seminar Room 332	Seminar Room 336	Seminar Room 340
	Corporate Governance	**Origins and theories of the corporation**	**Social enterprises/ ESG**	**Future Forecasts**
11.00	Corporate Governance – A Tale of Three Codes	Constructing legal personhood: corporate law's legacy	Finding the balance between profit and purpose: Should Australia create a legal structure for social enterprise?	Corporate Law Issue, Private Law Solutions: Resolving Disputes Arising from Corporate Security Contracts under PRC Law
	Pamela Hanrahan	**Peta Spender & Michelle Worthington**	**Alice Klettner**	**Dr Charles Zhen Qu**
11.30	Should we consider other ways to recognise the interest of all stakeholders?	An Eversion in Perspective: The Company as an Entity Chair: David Wishart	Hybrid Corporations and the Business Case for Profit Social Enterprise	Reforming Financial Regulatory System in China: Through the Lens of Regulating Asset Management Products
	Jean Du Plessis	**Susan Watson**	**Ellie Chapple**	**Weipeng He**
12.00	ASX Corporate Governance Principles and Recommendations:	A Conspiracy of Paper? William Paterson and the Mysterious Origins of Banking and Company Law	An empirical study of Corporate Social Responsibility in Taiwan	The Utility of Corporate Law in an Era of Increased Social Responsibility
	Shirley Quo	**John Farrar**	**Edith I-Tzu Su**	**Adefolake Adeyeye**

Parallel Session 4

Time	Seminar Room 326	Seminar Room 332	Seminar Room 336	Seminar Room 340
	Boards of Directors	**Insolvency**	**Responding to Corporate Misconduct**	**Blockchain & cryptocurrencies**
14.00	A diversity framework for board effectiveness and equality – insights from Malaysia and Canada	Voluntary Administration, Professional Innovation and Dissenting Creditors	Internal Corporate Whistleblowing Systems and a New Regulatory Paradigm	A toss of a (bit)coin: The uncertain nature of the legal status of cryptocurrencies
	Akshaya Kamalnath	**Roman Tomasic & Jenny Fu**	**Vivienne Brand & Sulette Lombard**	**Julie Cassidy & Alvin Cheng**
14.30	Self-restraint and Golden Parachutes: The Complex Ethics of Executive Remuneration	Director Restriction: An Alternative to Disqualification for Corporate Insolvency	A Responsive Law Approach to Corporate Wrongdoing: Why Equity Stripping and a Corporate Death Penalty Should be on the Table	Futures in the Past? A Sceptical Consideration of Blockchain Ventures Succeeding the Limited Liability Company
	Clement Labi	**Michelle Welsh**	**Meredith Edelman**	**Jonathan Barrett**
15.00	The Beginning of the Future of the Corporation	Misappropriated corporate funds and constructive trusts: NZ courts apply equitable remedies to assist liquidators	The use of "corporate culture" as a regulatory tool for corporations and financial institutions?	Deconstructing digital currency and its risks: Why ASIC must rise to the regulatory challenge
	Amanda Carrigan	**Trish Keeper**	**Vicky Comino**	**Michael Duffy**

Parallel Session 5

Time	Seminar Room 326	Seminar Room 332	Seminar Room 336	Seminar Room 340
	Stakeholder Perspectives	**Research Developments**	**Takeovers/M&As**	**Boards of Directors**
16.00	Common Corporate Owners, Concerted Corporate Actions?	Scraping the data: What can you do with the Royal Commission's Evidence	Applying "Truth in Takeovers" to Substantial Holders Chair: Ellie Chapple	Robots in the Boardroom
	Rob Nicholls	**David Wishart, Craig Macaulay & Juilianna Marshall**	**Emma Armson**	**Benjamin Liu**
16.30	Managing Creative Geniuses: Chinese Technology Companies with the Dual-Class Share Structure	The Future of Reward: Rethinking Remuneration in Light of Royal Commission into Financial Services	The Future of Market for Corporate Control in China	Regulating Board Personality in Corporate Governance: Insights, Challenges and Possibilities
	Jiang Hulqin	**Kym Sheehan**	**Chuanman You**	**Ngozi Okoye**
17.00	Consumers as Owners of Contemporary Firms	Marxist & Schumpetarian Perspectives on Corporate Insolvency Law: Handmaiden or Bulwark against Creative Destruction?	The Impact of Technological Change on Insider Trading Detection, Enforcement and Regulation:	An Evaluation of Sustainability in Large British Corporations
	Summer Kim	**John Tribe**	**Juliette Overland**	**Taskin Iqbal**

Keynote Speaker

Professor Luca Enriques

The keynote speaker for the 2019 conference will be Professor Luca Enriques (Oxford University) who will speak on Putting Technology to Good Use for Society: the role of corporate, competition and tax law.

Innovation and its main output, technology, are changing the way we work, socialise, vote and live. New technologies have improved our lives and made firms more productive, overall raising living standards across the world. Thanks to progress in information technology, the rate of change is accelerating. Disruption and disequilibrium are the new normal. His co-authors for the paper are J. Armour, A. Ezrachi and J. Vella.

In this essay, prepared as a chapter for the first phase of the British Academy 'The Future of the Corporation' initiative, we reflect upon the role that corporate, competition and tax law can play both to facilitate innovation and simultaneously assuage emergent societal risks arising from new technologies. We consider means of enhancing investment in research and development ('R&D') and optimising corporate organisation. But we also reflect on the risks associated with innovation, such as the use of technology to exploit consumers, manipulate markets or distort, unwittingly or not, the political process. Finally, we consider the way in which the environment for business law reform is subject to new political risks following the challenge to the liberal order from populism and the rising power of dominant technology companies.

Luca Enriques is the Allen & Overy Professor of Corporate Law, Faculty of Law, University of Oxford and a European Corporate Governance Institute (ECGI) Research Fellow. He is a co-author of The Anatomy of Corporate Law (3rd ed., 2017) and of Principles of Financial Regulation (2016). He has published widely in the fields of corporate law, securities regulation, and banking law. He has held visiting positions, among others, at Harvard Law School, where he was Nomura Professor of International Financial Systems (2012-13), the University Of Cambridge Faculty Of Law, the Instituto de Impresa (Madrid), and the Interdisciplinary Center Hertzliya. Between 2007 and 2012 he was a commissioner at the Italian securities market authority. Before joining the Oxford Faculty of Law, he was Professor of Law at the University of Bologna (2002-07) and at LUISS Guido Carli University in Rome (2013- 14), and a consultant to Cleary, Gottlieb, Steen & Hamilton (2003-07).

Guest Speakers

Lynne Taylor is a Professor and Associate Head of School at the School of Law, University of Canterbury. She and Ursula Cheer chair the School of Law's Learning & Teaching Committee. For the past five years Lynne and Ursula have led a national longitudinal study of the New Zealand law student experience, funded by Ako Aoteaora. Lynne's other research interests are company and insolvency law. Her most recent book is Corporate Law in New Zealand (Thomson Reuters), jointly edited with Professor Susan Watson of the University of Auckland. Recent teaching related publications include "The New Zealand Law Student Experience" [2018] New Zealand Law Review 693, "Student Engagement in Second Year Programmes in New Zealand Law Schools" (2017) 27(1) Legal Education Review 1 and "Ethnicity and Engagement in First Year New Zealand Law Programmes (2016) 36(5) Higher Education Research Development 1047.

John Caldwell is a specialist teacher in Family Law at the University of Canterbury, and is presently on the Editorial Board of the New Zealand Family Law Journal and the New Zealand Family Law Reports. He has been Chair of the Christchurch Family Courts Association and was the inaugural academic representative for the Family Court Judges Education Committee.

Lynne & John are presenting the (Company) Law Teaching Trial, Sunday 3 February at 2:00pm

Justice Susan Glazebrook was appointed to the High Court in 2000, to the Court of Appeal in 2002 and to the Supreme Court in 2012. In 2014, she was awarded the DNZM (Dame Companion of the New Zealand Order of Merit) for services to the judiciary. She is currently the President-Elect of the International Association of Women Judges. Before her elevation to the Bench, Justice Glazebrook was a partner in a large commercial law firm, specialising in tax and finance law. She also served on a number of boards and government committees. In 1998 Justice Glazebrook was the President of the Inter Pacific Bar Association, an organisation of business lawyers in the Asia-Pacific region.

Justice Glazebrook is presenting the Adapting to change: The Future of Corporate Governance, Monday 4 February 2:00pm

Judge Layne Harvey was appointed to the Māori Land Court on 1 September 2002.

Based in Rotorua, he is the resident Judge for both the Aotea and Tākitimu Districts of the Māori Land Court, hearing cases in New Plymouth, Hāwera, Whanganui, Levin, Palmerston North, Wellington and Hastings.

Before he was appointed, Judge Harvey practised for 11 years as a lawyer in Auckland with Simpson Grierson and with Walters Williams and Company, where he became a partner. His work included acting for iwi and hapū in Waitangi Tribunal claims and settlement negotiations, providing general advice to Māori organisations, and working in trust law and iwi legal and post-settlement governance structures.

Judge Harvey has also been a trustee of Māori land trusts, iwi authorities and Māori reservations and has been a member of the Council for Te Whare Wānanga o Awanuiārangi since 1997.

Mavis Mullins is chair of Atihau Whanganui Inc farming 200,000su in the Waimarino region and chairs Te Runanga of Rangitane ki Tamaki Nui a Rua. She has been the founding Patron and now Chair of AgriWomens Development Trust (AWDT) facilitating leadership and mentoring for rural women.

Recent achievements include:

2017 Inductee NZ Business Hall of Fame

2017 Outstanding Maori Business Leader – Auckland University,

2017 Distinguished Alumni Award – Massey University

2016 Westpac Rural Woman of Influence,

2015 Maori Business Woman Leader - Auckland University

The world is in a whirl, change is happening faster than you can blink! Geopolitical shifts, significant weather events, gender equity, and environmental challenges that will have impact well into the future.

Leadership and leadership navigation for the future, demands different models of partnership, collaboration and cross sector co-design to discover long term, deep and sustainable actions and solutions. Having a strong cultural lens within this environment can be both a barrier and a booster, a rod to hold fast to or a mythical story. Or maybe even a bit of both.

Current governance roles include Hawkes Bay Rugby Union (HBRU), StockX, Rangitane, Accelerate 25, Atihau Whanganui Inc, AgriWomens Development Trust (AWDT) and Predator Free 2050.

Past governance roles include Landcorp Farming, Massey University, 2degrees mobile, Mid Central District Health Board and Rangitane Tu Mai Ra.

Ngāti Awa, Ngāti Mākino, Te Arawa & Ngāti Hamoa

Brian Tunui is a qualified chartered accountant, CA and compliance professional who has worked for ASB Bank and Westpac NZ Ltd here in Aotearoa in the areas of business banking and risk management. His work experience also spans the military when he served as a commissioned officer in the Royal New Zealand Navy 1980-1987, and chartered accounting when he worked at Ernst & Young 1989 - 1993 in the corporate advisory area specialising in corporate and personal insolvency work. Brian worked overseas for a period of ten years, in Rarotonga for Standard Chartered Bank 1994 - 1999 and in Singapore for HSBC Bank 2003 - 2007.

In addition to a Bachelor of Commerce from the University of Auckland 1987 - 1988, Brian has also completed a Bachelor of Arts (Hons 1st Class) in Māori Studies from Victoria University 2011 - 2014, and is currently undertaking a PhD in Māori Studies at Te-Kawa-a-Māui, Victoria University. The kaupapa for his PhD is "What role does tikanga Maori play in the investment decision-making processes/frameworks of Maori investment organisations". Brian is currently the Ngāti Awa ki Pōneke hapū representative on Te Runanga o Ngāti Awa, a Trustee of the Poutama Trust, a Director of Ngāti Mākino Assets Limited and Chair of the Audit, Risk and Finance committee for Te Whare Wananga o Awanuiarangi.

Judge Harvey, Mavis Mullins and Brian Tunui are speaking at the panel session – Te Pae Hihiri Maori Governance – Navigating the future, Tuesday 5 February at 9:00am

Abstracts

Adefolake Adeyeye

Monash University

The Utility of Corporate Law in an Era of Increased Social Responsibility

Adefolake holds a PhD in law from the National University of Singapore, LLM from the University of Cambridge and LLB (First class Honours) from the University of Buckingham. She is attorney at law, New York State and associate member of the Institute of Chartered Secretaries and Administrators, UK.

Her research interests include corporate law and governance, corporate social responsibility and sustainability. Her book, Corporate Social Responsibility of Multinational Corporations in Developing Countries: Perspectives on Anti-Corruption was published by Cambridge University Press in 2012.

Professor Helen Anderson

Melbourne Law School

Piercing the Corporate veil to reach the Money: Why, How and Where to next?

New theoretical scholarship regarding piercing the corporate veil has largely fallen out of fashion, possibly because scholars consider that everything necessary has already been said. Yet the reasons for piercing continue to accumulate. These include the growing abuse of corporate structures to avoid taxation obligations and other debts, and the exploitation of workers through a wide range of dubious employment arrangements. In response, the Australian government has introduced legislation extending liability to holding companies and responsible franchisors through amendment to the Fair Work Act, and other reforms to the Corporations Act allowing contribution orders against related companies and beyond are proposed. This paper examines the reasons why selective veil piercing to impose liability on those benefitting from corporate or contractual arrangements is warranted, looks at the range of piercing measures already available, and ponders where the law might take us next.

Lance Ang

National University of Singapore

Directors' Duties and Stakeholder interests: A convergence towards a common law 'enlightened shareholder value' model?

The recent 2018 corporate governance reforms in the UK, Australia and Singapore have reignited the Berle-Dodd debate about whether companies should be accountable to their shareholders or wider stakeholders. Such reforms appear to denote a shift from a corporate governance model based upon 'shareholder primacy' to one that is more stakeholder-oriented. A closer examination, however, would reveal different regulatory approaches adopted by each jurisdiction with respect to resolving the agency costs between the company and its various constituencies. Drawing primarily on the experiences of the UK, Australia and Singapore, this paper provides a comparative overview of the regulatory developments in these jurisdictions to ascertain how each jurisdiction is moving towards an 'enlightened shareholder value' model in respect of the extent to which directors are required to take into account the interests of the company's stakeholders in corporate decision-making. It discusses the implications of these developments with respect to the potential for convergence towards a new common law 'enlightened shareholder value' model. In this respect, it is argued that we are witnessing the start of a nascent shift toward a new corporate form(s) which reflects varying 'degrees' of stakeholder orientation along a spectrum bookended by the 'shareholder primacy' model on one end, which represents the leitmotif in the common law at least until recently, and the 'shareholder enlightened value' model on the other. On this basis, this challenges the notion of the end of history that had suggested the triumph of the 'shareholder primacy' model as the standard normative corporate form.

Emma Armson
UNSW Law School

Applying 'Truth in Takeovers' to Substantial Holders

This presentation will analyse the extent to which ASIC's policy on 'truth in takeovers' (set out in Regulatory Guide 25, Takeovers: False and Misleading Statements) applies to substantial holders. One of the most contentious issues arising from the policy is the extent to which persons are held to statements that they have made during the offer period. The presentation will examine the rationale for the application of the 'truth in takeovers' policy to statements by bidders, target companies and substantial holders. It will then discuss the Takeovers Panel decisions applying this policy to substantial holders. In particular, the presentation will focus on issues arising from the differing approaches adopted by the initial and Review Panels in Finders Resources Limited 02 [2018] ATP 9 and Finders Resources Limited 03R [2018] ATP 11 respectively.

Dr Johnathan Barrett
Victoria University, Wellington

Futures in the Past? A Sceptical Consideration of Blockchain Ventures Succeeding the Limited Liability Company

Whether incorporation is considered a privilege or a right, Parliament through legislation, not the common law, confers juristic personality. Before the Joint Stock Companies Act 1844 (UK), ordinary businesspersons could not form a company; post-enactment, they could. Furthermore, the normalcy of limited shareholder liability was inconceivable prior to the Limited Liability Act 1855 (UK); soon afterwards, it became an ordinary investor expectation. These facts are inconvenient for theorists who imagine the corporation existing beyond the authorisation and control of a centralised bureaucracy. In their counterfactual history, heterogenous incorporated associations, reflecting the different desires and characters of their members, might have formed naturally and been recognised by the common law. In reality, company registration and a regulatory template was mostly imposed from the centre.

In light of the current market dominance of web-dependent, mega-corporations, it is useful to recall that, in the early years of the Internet, the prevailing libertarian philosophy predicted a deregulated, decentralised utopia worthy of EF Schumacher that would lie beyond the remit of any government. A reprisal of these wildly unfounded predictions can be seen in the Panglossian promotion of blockchain technology. In itself, a blockchain – a distributed digital ledger – is unexciting but the possibilities its boosters claim would be transformative. One possibility is a return to laissez faire business ventures that resemble pre-Salomon associations, albeit underpinned by the block chain's digital technology, rather than quill and ledger. This paper, which is informed by concession theory, sceptically considers the possibility of blockchain business ventures.

Dr Robyn Bowley
University of Technology Sydney

Professional Standards of Insurance Intermediaries: A Trans-Tasman Analysis

As intermediaries between their clients and insurers, insurance brokers and financial advisors play an important role in the process of arranging insurance. Being skilled professionals in the business of insurance they are expected to actively inquire into their clients' insurance needs, to advise clients about their disclosure obligations and to arrange insurance that provides adequate coverage. Intermediaries who fail to adhere to these expectations may be held liable in negligence and/or for breaches of their retainer, as well being liable for breaches of their statutory obligations. In Australia these statutory obligations arise under the Corporations Act 2001, the Australian Securities and Investments Commission Act 2001 and state and territory civil liability legislation. In New Zealand the

applicable legislation includes the Financial Advisors Act 2008 and the Insurance Intermediaries Act 1994. Recent inquiries including Australia's Financial Services Royal Commission and the Reserve Bank of New Zealand's Financial Services Conduct and Culture Review have highlighted several instances where intermediaries have fallen short of expected standards. Through an analysis of key Australian and New Zealand cases on insurance intermediaries' duties, this paper will both assess the extent to which appropriate professional standards have been maintained by the courts and consider the scope for further legislative reform in both jurisdictions.

Vivienne Brand and Sulette Lombard

Flinders University

Internal Corporate Whistleblowing Systems and a New Regulatory Paradigm

After many years of growing attention to the regulatory benefits of whistleblowing in a corporate context, we may now have reached the point where whistleblowing can be identified as part of an emerging 'smart' regulatory paradigm. Smart regulation suggests that the use of multiple policy interventions and a range of regulatory players can produce improved regulatory outcomes. A number of the design principles underpinning smart regulation align with the operation of internal corporate whistleblowing systems. Chief among these is the empowering of third parties to undertake part of the regulatory burden, to achieve better outcomes at less cost. In light of this, recent empirical evidence suggesting the presence of internal whistleblowing systems correlates with good corporate governance, while not demonstrating a causal link between internal systems and improved governance, is instructive. At the same time legislative interventions such as Australia's proposed new mandatory internal corporate whistleblowing systems regime demonstrate increased regulatory attention is being given to the place of internal whistleblowing systems. Taken together, these factors may suggest we are entering a new regulatory paradigm, in which internal corporate whistleblower systems are recognised as integral components of an effective corporate regulatory environment.

Amanda Carrigan

Charles Sturt University

The Beginning of the Future of the Corporation

The company has existed in its current form for hundreds of years and law regulating companies continues to grow and create history. The major issue with the company form and the law is the division between ownership and management which cannot be avoided. What can be addressed is the division between the two arms of management, the elected board and employed executive management below board level. This division has widened as companies have grown in size and complexity allowing executives to take more control yet avoid accountability.

The basis of the problem is agency. Ownership may dictate who populates the board yet it cannot hope to control executive management agents within the company. This company form then tolerates the costs associated with agency such as, lack of vigilance for finance and ability to avoid risk for their decisions.

It is proposed the board, which costs much more than any executive management costs, should be reunified with the executive level (with remuneration reflecting executive positions). This gives a direct link between owners and management, increases management's accountability, reduces costs, protects corporate wealth and should reduce breaches of the corporate law. The only issues to be worked out would be nominations for both executive and non-executive positions and associated succession planning.

Professor Julie Cassidy

University of Auckland

Kuwait revisited

This paper revisits the controversy underling the potential vicarious liability of a holding/parent

company for the acts of its nominee directors on the board of a subsidiary. It considers the polaristic views expressed by the Privy Council in Kuwait Asia Bank EC v National Mutual Life Nominees Ltd [1990] 3 NZLR 513 and that of Thomas J in Dairy Containers Ltd v NZI Bank Ltd (1995) 7 NZCLC 260,783. It contends that the reasoning advanced by Thomas J for placing liability on the holding company undermines the very foundations of company law, namely separate legal personality and limited liability. Further, the analysis returns to the oft forgotten exceptions articulated in Kuwait itself: bad faith, fraud and active interference by the holding company. It explores the appropriateness of such 'exceptions' in both a common law and legislative context. It concludes that there are strong policy reasons for making the parent company liable in these extreme circumstances.

Professor Julie Cassidy

University of Auckland

Dr Man Huang Alvin

University of Nottingham

Based on similar technology, hundreds of cryptocurrencies are being created and traded. Bitcoins are by far the most popular cryptocurrency, but many others exist. Defining the legal nature of cryptocurrencies is important for many reasons. At its most fundamental level the answer to these matters will determine the regulatory framework within which trading in cryptocurrencies may or may not occur. At one extreme the government may simply prohibit trading in cryptocurrencies, even making such transactions illegal, as in China and Vietnam. At the other end of the spectrum, trading may not only be legal, but facilitated by government concessions. The most important of these concessions is recognising cryptocurrencies as "currency". To this end it is crucial from the outset to understand that that the term "cryptocurrency" is in itself a misnomer. If it is to obtain the status of "currency", whether that be foreign currency or equivalent to local currency, will be determined by the government of the relevant jurisdictions. As in the case of Vietnam, New Zealand and Australia's CGT, it may be determined that transactions involving cryptocurrencies merely involve the sale of property, possibly akin to a financial product. Alternatively, as in the case of Japan and Australia's GST, it may be treated as "currency" that has the same status as foreign currency or, in extreme cases, equivalent with currency issued by the local sovereign state. As to which way a government might turn is anyone's guess: A toss of a (bit)coin!

Ellie Chapple

QUT Business School

Hybrid Corporations and the Business case for the For Profit Social Enterprise

"Hybrid Corporation" refers to statutory created corporate entities that pursue dual goals: both profit and social. In the process of hybridization, these companies produce a unique business model by combining the social logic of non-profits with the commercial logic of for-profits. There are at least six different forms of legislative hybrid corporations, originating from four countries: UK, Canada, USA and Bangladesh. The latter is the significantly different jurisdiction, given the extent of social and economic disadvantage of the general population compared to the other jurisdictions. This research aims to compare the features of the regulation of hybrid corporations, with a view to evaluating the efficacy of the Bangladesh model: where hybridisation does not permit the compromise the social goal for the profit goal and where profits have to be generated through serving society in a responsible way. This business model, if successful, would be a significant step towards resolving financial unsustainability of

social-minded organizations. The research does this by presenting case study evidence as to how hybrid corporations operate in Bangladesh.

The research addresses the conference theme: Possible Futures for the Company and for Corporate Law, as we move away from the purpose of the corporation as an aggregation of private wealth and move toward its conception as a mechanism for social advancement.

Dr Vivien Chen

Monash University

State-owned corporations in a kleptocracy: the Malaysian regulatory framework

1MDB, a Malaysian state-owned corporation, has been at the centre of money laundering investigations internationally. Hailed as one of the largest kleptocracy investigations in history, questions arise as to how scandals of such magnitude occurred despite a seemingly strong corporate regulatory framework. My research examines the manner in which the corporate form has been used to expropriate billions of dollars from the Malaysian people. It looks beyond the veneer of good governance initiatives and analyses how kleptocrats have exploited gaps in the regulatory framework and controlled mechanisms for the enforcement of corporate law to their advantage.

While 1MDB has received considerable international attention, it is arguably the tip of the iceberg. My research explores a lesser-known case of kleptocracy by former Chief Minister Taib Mahmud in the Malaysian state of Sarawak, a state rich in natural resources and inhabited by indigenous tribes. It considers the question of corporate accountability amidst the displacement of indigenous people from their traditional lands and human rights violations. Lessons are drawn from a comparative analysis of the governance of Singaporean state-owned corporations.

Dr Vicky Comino

University of Queensland

The use of 'corporate culture' as a regulatory tool for corporations and financial institutions?

Recent corporate and financial scandals, globally and locally, have yet again turned the spotlight on the failures of senior executives, corporations and also regulators to combat white collar crime. A recurring theme in analyses of the causes of corporate and financial misconduct is poor culture. Certainly, this is the view of Commissioner Hayne in his preliminary report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Hayne Royal Commission). Meanwhile, the perceived failure of regulators to hold to account wrongdoing corporations and directors, by not prosecuting them, has undermined trust in the financial sector, regulators and political oversight. Indeed, trust in public institutions in Western liberal democracies is at an all-time low. Australia is not immune from this phenomenon as the Hayne Royal Commission hearings have demonstrated. The focus of this paper is on the extent to which corporate culture can be used as a regulatory tool. It will argue that despite a wealth of scholarly work and commentary on 'corporate culture', its use as a regulatory device to instil a superior culture in corporations is problematic, and will highlight what those problems are. That said, it will examine efforts to use 'corporate culture' as a legal mechanism in prosecutions and some recent initiatives and 'new' regulatory tools aimed at driving cultural change in corporations. These include embedding ASIC supervisors in the major Australian banks, the Banking Executive Accountability Regime, and the increasing use of 'new' tools, such as enforceable undertakings and deferred prosecution agreements.

Scott Donald

University of NSW

Whether customer protection in financial services? From caveat investor to fiduciary plus (via duties of fairness, care and good faith)

The calls for more effective customer protection in the financial services industry have risen to a crescendo in recent times. The challenge for law-makers and regulators is to calibrate the settings for that protection across the wide range of settings in which protection is desirable in a way that is principled, consistent and defensible. This paper first maps the way that private law and statutory rules applied in

different settings span a spectrum of constraint on self-interested behaviour, from caveat emptor at one extreme to duties to promote the interests of the customer at the other. It then distils principles from the doctrines of private law which can help to inform the appropriate calibration of statutory interventions and reforms. It argues, for instance, that contrary to calls from some corners, not all financial services relationships need to be, or ought to be, fiduciary. A more nuanced approach to allocating responsibility and accountability, one that responds also to the objective of the regulation, is required.

Michael Duffy

Monash University

Deconstructing digital currency and its risks: Why ASIC must rise to the regulatory challenge

Digital currency is a 'disrupter' of financial services and currency markets and as such presents new regulatory challenges. International regulatory responses to digital currency range from being largely ignored in some jurisdictions to being banned in others with most jurisdictions charting a middle course of 'wait and see' while attempting to deal with pressing issues (such as taxation liability and potential money laundering and terrorism financing issues). This article explains digital currency, its benefits, its problems and its risks and the regulatory response so far. It analyses the extent to which the Australian Securities and Investments Commission (ASIC, the national securities regulator) may or may not have regulatory power and jurisdiction under existing Australian law and the role of other relevant regulators and institutions. It concludes that digital currency may well be a 'financial product' under s 763A of the Corporations Act 2001 (Cth) (though many suppliers/issuers of that product will be website operators located outside Australia). As a financial product, ASIC would also have jurisdiction over issuers and markets that trade in that product. This could easily be fortified with legislative changes to increase the certainty of this conclusion but in any event it is suggested that ASIC should test its powers. Regulation of digital currency by ASIC would add to recent moves to deal with digital currency by AUSTRAC and the Australian Taxation Office (ATO). This article argues that the time has come for Commonwealth regulation of digital currencies by ASIC as the relevant regulator. This would then trigger the obligations set out in the Corporations Act and the ASIC Act, including Australian Financial Services licensing, Australian Market licensing, standards of efficiency, honesty and fairness, disclosure provisions and possible market offences and corporate regulation generally. The suggested jurisdiction of ASIC would build on the existing role of ASIC, the ACCC, the ATO and AUSTRAC.

Jean Du Plessis

Deakin University

Reconsidering the "soft law" approach to corporate governance: Should we consider other ways to recognize the interest of all stakeholders?

Voluntary corporate governance codes became very popular since 1992 after the UK Cadbury Report came out. However, if one analyses some recent corporate collapses and the almost total disregard for good corporate governance practices, one might be sceptical whether these voluntary corporate governance codes have achieved what they were intended for. In this paper the focus will be on the collapse of the UK based Carillion group and on the collapse of the South African based Steinhoff group. The blatant disregard of 'voluntary' good corporate governance principles will be emphasised. What is the answer? Are there alternative solutions? Does the innovative approach in Israel, regarding class actions and a class action public fund provide an answer?

Meredith Edelman

Monash University

A Responsive Law Approach to Corporate Wrongdoing: Why Equity Stripping and a Corporate Death Penalty Should be on the Table

A robust theory of the firm and a strong normative purpose is required to effectively regulate corporations. In other words, we have to understand what a corporation is and how it works if we want to be able to secure compliance with law and hold corporations accountable for wrongdoing. A legal system working to address corporate harms should be designed in such a way that it would facilitate the identification of failures and breaches the lead to harms, and to then have a range of tools to respond to the kinds of failures and breaches that are determined to have occurred. The theory of the firm relied upon in tort and criminal proceedings against corporate entities in common law jurisdictions largely reflects an outdated perspective on the relationship between organizations and individuals in a global economy dominated by multinational firms.

This paper will argue for a responsive law approach to corporate wrongdoing, based on a practical and empirically informed understanding of corporate behavior. Such an approach would see the state reclaiming its authority over corporations, while recognizing the limitations of an approach based on establishing intent when decision-making is diffused among a group of individuals. As creations of state law and given the difficulty of establishing intent, the law applied to organizations should be different from that applied to individuals, and this paper will argue that neither tort nor criminal law adequately theorizes the normative capacity of corporate entities. Assuming that corporate entities are moral agents, this paper argues that states should consider adopting an approach to wrongdoing that is flexible, responsive, and robust. Specifically, such an approach would do away with the distinction between civil and criminal law for corporate wrongdoing, and allow for a range of potential penalties to range from fines or remediation to the stripping of equity for the benefit of victims of corporate wrongdoing, and the corporate death penalty in extreme cases.

Emeritus Professor John Farrar

Bond University

A Conspiracy of paper? William Paterson and the Mysterious Origins of Banking and Company Law

This paper discusses the connections between the formation of the Bank of England and Bank of Scotland and the Darien Scheme and South Sea Bubble. It contrasts these with the Banque Royale and Mississippi Company. It discusses the role of two Scots, William Paterson and John Law, and how their writings anticipated Adam Smith.

Dr Ronán Feehily

University of Canterbury

Institutional Shareholders and Non-Executive Directors; Divergent Gatekeepers in the Pursuit of Effective Corporate Governance

Institutional shareholders have been characterised as 'absentee landlords' of their companies, failing to effectively scrutinize the boards' risk management and practices. The European Commission Green Paper confirms that shareholder passivity is a severe problem in listed companies with dispersed ownership. Similarly, non-executive directors have been criticized for receiving excessive remuneration packages while contributing to the downfall of financial and corporate institutions. However, requiring regulatory and legal compliance can be quite challenging in a context where the perception exists that companies with the worst corporate governance compliance have produced the

best financial returns. Transparency and accountability of institutional shareholders has resulted in ostensible engagement between boards and fund managers failing to prevent or solve financial crises. Some business leaders claim that an indiscriminate increase in institutional investor activism could harm shareholder democracy and that the majority of the shareholders in listed companies lack the incentive to get involved in corporate governance as they hold their shares as an investment and often have little interest in the company itself. Institutional investors' primary objective is to maximize the return of their investments, but they can be a powerful corporate governance mechanism. Non-executive directors are central to good corporate governance and are well placed to ensure transparency and accountability in the board's decision-making. This paper analysis the roles of non-executive directors and institutional shareholders in the context of contemporary corporate governance, the confluence and conflict between these two divergent gatekeepers, and concludes with proposals for regulatory and law reform to enhance effective corporate governance.

Jenny Fu & Roman Tomasic

University of South Australia

Voluntary Administration, Professional Innovation and Dissenting Creditors - Mighty River International Limited in the High Court of Australia

The enactment of Part 5.3A of the Corporations Act (Cth) introduced a flexible and non-judicial mechanism for the administration of companies in distress. Although originally seen as being of greatest use to small to medium sized companies, voluntary administration is also available to larger companies. In the place of the courts, the management of a voluntary administration is largely placed in the hands of one or more registered company administrators and the creditors. As an alternative to liquidation, the legislation created tight time lines for the holding of meetings of creditors and the preparation of a Deed of Company Arrangement (DOCA). It also imposed a moratorium on creditor actions during the administration. However, complex corporate voluntary administrations have led insolvency practitioners to seek to extend these narrow time limits and to develop a procedural mechanism, known as the "holding DOCA", so as to provide administrators with more time to achieve objectives that have been approved by meetings of creditors. However, the language of Pt 5.3A did not specifically provide for this procedure, although its development is arguably consistent with the broader framework of the Act. In a narrow 3:2 majority decision arising out of the voluntary administration of Minerals Resources Limited companies, the High Court of Australia in 2018 approved the use of this "holding" procedure, after a strong challenge to the terms of the holding DOCA from one creditor (Mighty River International Limited). Whilst the High Court's majority decision has been enthusiastically welcomed by insolvency practitioners, it is argued here that there is a need for legislative clarification, as the holding DOCA procedure will not always be available. Such legal reforms are especially important as VAs are now commonly used for the administration of larger and more complex companies, often structured as corporate groups.

Pamela Hanrahan

UNSW Business School

Corporate Governance - A Tale of Three Codes

This paper considers changes made or proposed to the UK, Hong Kong and Australian corporate governance codes for listed entities during 2018. It argues that, in the UK in particular, there is a marked shift away from using these 'comply or explain' codes to encourage structures that support the accountability of the board and management to shareholders, towards promoting other political interests. Taking into account the history of codes since their beginnings in the early 1990s and their fractured record in achieving better corporate behaviour, the paper argues that we ought to be worried about the democratic deficit this shift creates and the divergence between systems it reveals.

Professor Jason Harris

Sydney Law School

The past, present and future of corporate rescue laws

This paper presents an empirical study of Australia's voluntary administration laws. Voluntary administration has been in operation for 25 years and during that time the popularity of the procedure has waxed and waned, going from the most common form of external administration to representing just 10% of all corporate insolvency appointments in recent years. This paper presents statistical data taken from a 5% sample of all voluntary administrations over the period of 1993-2017 and presents a critical analysis of the results, including typical outcomes, numbers of companies still registered, the duration of the procedure and the numbers of overlapping appointments.

Weiping He

Monash University

Reforming Financial Regulatory System in China: Through the Lens of Regulating Asset Management Products

China adopted an sector-based regulatory approach in the form of the One Bank – Three Commission regulatory structure in 2003. This structure involved the People's Bank of China (PBoC), China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC) and the China Insurance Regulatory Commission (CIRC) in charge of monetary policy, the banking, the securities and the insurance sector respectively. In 2017, the National Financial Works Meeting proposed at the policy level to move towards a function-based regulatory structure under which China Banking & Insurance Regulatory Commission (CBIRC) to replace the CBRC, and the CIRC, and the PBoC to make regulations and prudential regulatory rules about the banking and the insurance sectors.

In the light of the subsequent implementation of the National Financial Works Meeting proposal in March 2018 (the 2018 reforms), this article examines the financial regulatory structure in China as a result and their impact on asset management products regulation. It is argued that China's regulatory structure did not adequately protect the interests of investors in asset management products. This not only provided fertile ground for investors to lose their savings through the unscrupulous and inappropriate practices in relation to managed investment products, it lead to the possibility for systemic financial risks and financial instability. The article also concludes that the 2018 reforms will have a limited impact on the manner in which asset management products are regulated.

Jiang Huiqin

Singapore Management University

Managing Creative Geniuses: Chinese Technology Companies with the Dual-Class Share Structure

The thesis of this paper is that the dual-class share (DCS) structure presents risks resulting from entrenched control, and possible safeguards against those risks must be introduced. A DCS structure is a capital structure that permits companies to issue shares with differentiated voting rights. It enables the founders to retain their majority control even though their shareholdings are diluted when raising capital from the public. This and other benefits have incentivised several Chinese technology companies to consider this structure when they seek listings. However, the DCS structure introduces entrenchment and exploitation risks. It breaks the link between cash-flow rights and voting rights, which reduces the controlling shareholder's ownership incentive and accelerates agency costs. It may also increase the controlling shareholder's incentive to pursue private personal interest at the expense of exploiting non-controlling shareholders. The quest to achieve a balance between management entrenchment and minority shareholder protection has been a hotly-

debated issue. This paper offers fresh insights into how this issue is resolved by analysing closely the DCS structures of two Chinese technology companies, Meituan Dianping and Xiaomi Corp., the first two DCS-structure companies listed on the Hong Kong Stock Exchange since the greenlighting of DCS-listings in April 2018. Examining publicly available information, this paper analyses these two companies' corporate governance structures, in particular, by highlighting their differences from those of JD.com and Alibaba Group, the Chinese technology companies listed in the United States. This paper then proceeds to explore the risks of management entrenchment, and suggests possible safeguards against them.

Dr Taskin Iqbal

Lincoln Law School

An Evaluation of Sustainability in Large British Corp

This article undertakes an assessment of the sustainability efforts of some of the largest corporations that are listed on the FTSE 100. It provides empirical insights into how large listed British corporations are addressing sustainability and their efforts in terms of incorporating sustainability factors into their business operations. The study was based on an extended content analysis of each corporation's annual and sustainability reports. Our findings demonstrate that corporations are trying to integrate sustainability in their business strategies even though there are variations in their efforts. There are indications that the majority of the corporations have been able to embed sustainability in their strategy and operations and are now attempting to establish goals for further improvement. We found strong evidence of willingness to engage with relevant stakeholders to evaluate which sustainability issues are of importance to the particular corporations and then to communicate to those relevant stakeholders the measures that have been taken to integrate sustainability in their business strategies. However, our findings also revealed areas where there is a need for further improvement such as compliance with international standards for sustainability reporting and establishment of better frameworks to enhance their sustainability efforts.

Edith I-Tzu Su

An Empirical Study of Corporate Social Responsibility in Taiwan

Corporate social responsibility is a hot topic recently, and it is very important from corporate governance perspective. The debating of shareholder primacy and stakeholder theory never stops. This paper examines the articles of incorporation of public listed companies then analyses them. Also, the Taiwanese corporation law amends article one section two, installing corporate social responsibility into the corporate law. How will this amendment influence the corporate social responsibility both in theory and practice? This paper will also discuss the potential influence and practical suggestions.

Akshaya Kamalnath

Deakin Law School

A Diversity Framework for board effectiveness and equality – Insights from Malaysia and Canada

The recent resignation of AMP's chairperson, Catherine Brenner, has opened up the debate regarding board gender diversity regulations. The misconduct uncovered by the Royal Banking Commission also gives rise to questions of board effectiveness.

This article makes two arguments. The first argument is that while, gender equality in the workplace is an important goal this should not divert the focus from board effectiveness in corporate governance regulation. Board effectiveness helps monitor management and thus check misconduct which (as recent instances of misconduct in the financial services industry show) can have a detrimental impact on society. The second argument is that efforts to improve equality in the workplace must be widened beyond the dimension of gender to include aspects like race. So how do we reconcile the two goals of ensuring board effectiveness and workplace equality? The article draws from Canada and Malaysia to propose a diversity regime that supports board effectiveness and equality.

A focus on board effectiveness would not only require hiring qualified members but also those who are willing and able to question and disagree with management. Thus, what is required is viewpoint diversity. The new Malaysian Corporate Governance Code which specially aims to counter the problem of controlling shareholder groups, provides some solutions in this regard. A focus on equality would require us to emphasise various types of demographic diversity. Canada's new law which widens the focus to include not only gender but also aboriginal peoples, persons with disabilities and visible minorities, would be worth drawing from.

Associate Professor Trish Keeper

Victoria University Wellington

Misappropriate corporate funds and constructive trusts: New Zealand courts apply equitable remedies to assist liquidators

This article discusses two recent New Zealand decision that have highlighted the powers of liquidators to trace corporate funds into non-corporate hands and the equitable remedies that may be available to the liquidator in such cases.

This article first considers two cases. The first is the 2017 New Zealand Court of Appeal decision in The Fish Man Ltd (in liquidation) v Hadfield [2017] NZCA 589. This was an appeal by the liquidators of The Fish Man Ltd (in liquidation) from an unsuccessful application to the High Court to have previously disclaimed property vested in the company. The Court of Appeal examined the ability of a liquidator to trace a proprietary interest in the disclaimed property flowing from the misappropriation by a director of the Fish Man of corporate funds to pay his personal mortgage liabilities.

The second case is the 2016 High Court decision of Intext Coatings Ltd (in liq) v Deo [2016] NZHC 2754. In this decision, the Court found that the defendant had been unjustly enriched by the use of company funds to make mortgage repayments as part of a secured debt owed by her to third parties. On this basis, the Court ordered a equitable charge over the property in question in favour of the company equal to the amount of company money used to discharge the defendant's mortgage debts.

Sonia Khosa

University of Sydney

Aus-India Securities Markets Bilateral Corporation within the Indo-Pacific Region

According to the recent reports of the World Bank and the IMF, Asia, in the coming decades, will be the 'engine' for growth of the global economy with some of its economies growing at around 7.4 and 6.4 percent, which is well above the global growth average of 3.9 percent. Paradoxically, the United Nations Development Programme's Report for 2017-18 also reports nearly 400 million people in Asia-Pacific as trapped in abject poverty.

Securities markets have been shown to play a critical role in the financial and economic development of a region and therefore, the imminent prospects and the challenges before the Indo-Pacific region present both critical and appropriate conditions before its governments, regulatory institutions, academic fraternity, self-regulatory organisations and other stakeholders to collaborate and engage effectively so as to extract the 'opportunities' and remove the 'obstacles' that restrain the region from realizing its enormous potential.

Against these possibilities, this paper explores the viability of deeper and meaningful 'securities markets cooperation' between India and Australia, as a starting point, followed by more formal agreements like Mutual Recognition Agreements. Such arrangements will enable market participants from one jurisdiction to operate in the other jurisdiction based on the compliance of laws of their home jurisdiction alone; thus reducing hurdles and duplication in compliance for businesses that operate cross borders. Upon a successful pilot of such Indo-Australia bilateral cooperation, the bilateral model may be emulated by other jurisdictions, and eventually be developed into

an effective, multilateral recognition and collaboration programme amongst Indo-Pacific securities jurisdictions.

Summer Kim

University of California

Consumers at Owners of Contemporary Firms

Consumers occupy a multiplicity of roles in contemporary firms. For example, the consumer of a firm that crowdfunds its product on a crowdfunding platform like Kickstarter is also a "backer." Backers do not take equity but contribute capital, ideas, feedback, and advertising, in exchange for rewards-based incentives, which could range from an early bird discount to a meeting with founders depending on the level of their contribution. In these cases, backers take on a role which is a hybrid of consumer, producer, promoter, and investor. This new and multi-dimensional status of consumers within contemporary firms requires several updates to the traditional theories and models of the firm. Specifically I argue that in situations where the consumer holds the most critical investment decision, the consumer should be treated as one of the principals in the principal-agent model and as one of the key stakeholders in the stakeholder models of firms. I illustrate how this proposal would be operationalized and discuss its expected costs and benefits. As further support of this shift toward a "customer as owner" (or customer-oriented) view of corporate governance, I explain how recent scandals at Facebook and Wells Fargo could have been averted through a consumer-oriented approach to corporate governance. I also demonstrate how consumer-oriented corporate governance can inject diversity, long-termism, accountability, and social responsibility into the boardroom, the lack of which have been longstanding critiques of corporate culture in the United States.

Dr Alice Klettner

University of Technology Sydney

Finding the balance between profit and purpose: Should Australia create a legal structure for social enterprise?

Over the last decade, the idea of social business or social entrepreneurship has become a popular reality in many countries across the globe. These social enterprises take a line that falls somewhere between traditional commercial enterprise and not-for-profit (NFP) organisations. The main difference is that the primary aim of a social enterprise is not to make profits for shareholders but to further a particular social mission. They cannot usually be classed as a not-for-profit or charity as they have commercial aims, it is just that they wish to re-invest a large proportion of profits to further their social mission. In some countries, notably the UK and US, new corporate structures have been developed to facilitate this kind of enterprise and to clarify the funding model and duties of directors of social businesses. In other countries, including Australia, social entrepreneurs have to make do with existing legal structures, adapted as far as possible to support their social purpose. This paper explores whether Australia should consider implementing legislation to create a corporate structure dedicated to social enterprise. It reviews data on the legal structures currently chosen by social entrepreneurs in Australia and the challenges that these structures present. It compares this to the situation in the US and UK where new hybrid corporate forms such as benefit corporations and community interest corporations are available. It explores the advantages and disadvantages of these different legal business structures for different types of enterprise.

Clément Labi

University of Luxembourg

Self-Restraint and Golden Parachutes: The Complex Ethics of Executive Compensation

The debate over board remuneration, and its recent incarnation in the avalanche of so-called "say-on-pay" provisions implemented across jurisdictions, is not etiologically or in essence a legal one, and cannot be comprehended in terms of mere economic efficiency as to its implications. On the contrary, we find it to be a feature of a much larger discussion over wealth distribution, whose intensity has been accelerating in the recent years. Less conspicuously, we propose that another, stronger rationale for the backlash against excessive director remuneration stems from the very notion of excess. We will show how the Platonic and Aristotelian concept of sophrosune (self-restraint) - of which boards appear to be, or are represented as, lacking – explain the general feeling of reprobation of excessive corporate remuneration in the public discourse. However, the question arises as to whether companies and their directors can live with self-restraint whereas other stakeholders (such as shareholders and the State) do not. As is oftentimes the case, then, an ethical perspective brings about more questions than answers.

Dr Rosemary Langford

Melbourne Law School

Directors and Corporate Opportunities

There is no doubt that company law – and directors' duties as a core component of company law – are facing challenges from the advent of new technology, stakeholder concerns, and the demands of climate change and reassessment of capitalist tenets. In the same way, directors' duties (and therefore derivatively, company law) are facing challenges due to the increasing complexity of modern directorships and the multiple roles played by directors. These challenges necessitate a re-evaluation of a number of aspects of directors' duties and, in particular, of the duties to avoid unauthorised conflicts of interest and profits from position, which were formulated at a time when corporate life was far less complex. Particular contexts that require critical analysis and potential change in approach are multiple and competing directorships, nominee directorships and corporate opportunities. This paper focuses on corporate opportunities, comparing the approach taken in the UK and in Australia (with observations from New Zealand, Hong Kong and Canada). It demonstrates that, despite these contemporary challenges, the UK has maintained a strict approach to the taking of corporate opportunities. Australia, by contrast, has adopted a modified approach, which focuses on whether the relevant director had a duty to bring in opportunities. It is argued that this modified approach is undesirable for a number of reasons and that the UK approach is preferable.

Dr Benjamin Liu

University of Auckland

Robots in the Boardroom

With its rapidly growing capabilities and sophistication, artificial intelligence has been brought into the boardroom, assisting directors with decision-making in various aspects of business operations. This raises many interesting and difficult issues, such as whether the board is allowed under the current law to delegate decision-making powers to an AI system, and what restrictions should apply. These issues are further complicated by the proprietary and confidential nature of certain AI systems developed externally, and the black-box problem of modern AI technologies. This article attempts to offer some answers to these questions, while arguing on a general level that the existing corporate law in Australia and New Zealand needs to be adapted to meet the challenges posed by AI.

Craig Macaulay, Julianna Marshall and Associate Professor David Wishart

La Trobe University

Scraping the data: What can you do with the Royal Commission's Evidence

Increasingly research into corporate law involves huge data sets. That is even without thinking in terms of Big Data. Many cases require specialist document storage and search platforms courts contract with third parties to provide. Inquiries record huge amounts of information and likewise frequently need to have storage and search firms provide services to them.

An example of this is The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. It has produced mountains of data in the form of transcripts, submissions, and tendered evidence. All is available on the Royal Commission's website although only in raw form.

The data represents a wealth of information which could be invaluable to researchers. The issue is that although it is available, it is to all intents and purposes unsearchable. This paper explores how it could be made usable by researchers using the Royal Commission's material as a case study.

Second, the paper considers whether the data is searchable and how Computer Assisted Qualitative Research Software products such as NVivio, ATLAS and MAXqda would work.

Third, and given the quantum of data, whether Artificial Intelligence could be used to scrape the data and develop search ontologies. Prospects for doing this include discovery algorithms such as Relativity or Ringtail.

While each treasure trove of data is individual, the paper provides a guide to what can be done and the difficulties attendant is accessing and processing available data.

Tracey Mylecharane

ANU College of Law

Consumer Trust in Retail Banking – Is It Difference?

The nature of banking in Australia has changed dramatically over the years. What was once a small sector with only savings banks and trading banks in the early 1900s, has become "one of the strongest, most stable banking superannuation and financial services industries in the world, which performs a critical role in underpinning the Australian economy" (Letters Patent establishing the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, page 1).

Since the global financial crisis (GFC) in 2008, there has been a focus on what has been termed a "lack of trust and confidence by consumers in the banks". These issues have been considered in several of the inquiries and reviews that have taken place into the financial sector since the GFC, and is at the core of the 2018 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

David Coleman, in the report issued following the Review of the Four Major Banks in 2016, commented "Australian's should be able to trust their bank will act in their best interests when they turn to them for help". But should they? This paper considers that proposition.

This paper will examine the evolution of the banking sector, the public role and contribution of the banking sector, the socialisation and expectations of shareholders, and the obligations on banks to deliver profits. It will explore whether the concept of consumer trust in retail banking is a reasonable expectation, and whether this concept misguided.

Rob Nicholls

UNSW Business School

Common Corporate Owners, Concerted Corporate Actions?

There is a growing body of literature in the United States that raises concerns about common ownership of corporations by the largest money market funds. In particular, there has been concern raised that funds operated by institutions such as Black Rock or Vanguard have the capacity to reduce competition and competitiveness in concentrated sectors by their use of corporate actions. The antitrust concerns on common ownership partly reflect increased ownership concentration in the US and the apprehension that this also limits the contribution of shareholder wealth growth to consumer welfare.

This paper examines the potential common ownership effects flowing from the structure of Australian corporate ownership and specifically in the context of superannuation funds. It places this analysis in the new framework created by the November 2017 changes to Australian competition law, which prohibit concerted practices and the rise of shareholder activism by superannuation funds.

The paper first analyses the international literature on common ownership before focusing on the Australian context. It then turns to the distinctive aspects of superannuation funds as investors with an emphasis on their roles as trustees and the use of custodian banks. The paper finally conducts a competition law analysis, before drawing conclusions.

The work demonstrates that calls for shareholder activism, especially in the superannuation sector, may lead to risks that flow from both trustee obligations and the 2017 changes to Australian competition law.

Dr Beth Nosworthy and Professor Christopher Symes

University of Adelaide

The components of corporate governance for financially distressed companies

Companies of all sizes have the propensity to fall into financial distress. In such circumstances, some companies continue under the governance of the existing directors, some move into a more formal external administration conducted by an insolvency practitioner, which may or may not include the directors in any ongoing management of the company. There are similarities in the duties that the law imposes on directors and insolvency practitioners, but also significant differences, which have the propensity to lead to inequality in the treatment and expectations of directors and insolvency practitioners. This paper looks at who controls the entrants and exits, the timing, the powers, the diversity and the pay of those who manage finically distressed companies, whether any inequalities can be justified and how they could be managed.

Ngozi Okoye

University of Lincoln

Regulating Board Personality in Corporate Governance: Insights, Challenges and Possibilities

Corporate governance is concerned with directing and controlling the operations of a company. It is about ensuring that corporate entities are governed effectively in order to actualise their purpose. Historically, there have been debates, underpinned by corporate theories, regarding what the corporate purpose is or should be. However, regardless of the side that one takes in relation to these debates, a key issue which is of note is that companies need to be governed. This means that corporate governance is a necessary activity. The board of directors is responsible for corporate governance and under

the corporate law in numerous jurisdictions, the governance of corporate bodies is essentially placed in the hands of directors. One issue that is evident is the requirement that corporate boards are made up of human beings. Even in countries that allow for corporate directorships, there is usually a condition that at least some of the board members would be human. To this extent, the issue of the personality of the human beings and the ensuing personality that develops on the board becomes relevant. This paper discusses the significant issues relating to board personality and how that translates to effective corporate governance. It engages with the evidence that indicates the connection between personality, decision making and actions. The reality of what corporate boards do and how their personality counts is analysed. The paper then interrogates the corporate law and corporate governance framework to determine the extent to which corporate regulation takes account of board personality issues.

Associate Professor Juliette Overland

University of Sydney Business School

The Impact of Technological Change on Insider Trading Detection, Enforcement and Regulation

Developments in the use and availability of technology are changing the ways in which we access information, communicate with others, and carry out a variety of personal and commercial activities. Those technological developments are also having an impact on a variety of corporate crimes, such as insider trading. The use of technology has significant implications for those who may be tempted to engage in insider trading, as well as those who wish to detect insider trading and enforce insider trading laws. This paper will explore these topics and consider the challenges which technological changes present to the regulation of insider trading.

Sagi Peari

University of Western Australia

Choice Equality Foundation of Choice of Law and Corporation

In May 2018 the Choice Equality Foundation of Choice of Law (written by Dr. Sagi Peari, Oxford University Press, 2018) saw light. This work offers a conceptual account of the question of the applicable law to adjudicate civil/private law cases with a "foreign element" in their factual basis. Which law, for instance, applies to adjudicate a car accident between an Ontario resident and a New York resident that took place in Mexico, or a contract signed in Japan between Australian and German residents with respect to delivery of goods in Brazil? The book has fundamentally challenged the traditional vision of the subject as based on a "foreign element". Further, it has been argued that the subject is fundamentally grounded on such transnational values as "party autonomy" and "international human rights" which can be traced in various systems (including US, Canada, China and Australia) under different labels and titles.

Shirley Quo

Murdoch School of Law

Australian Stock Exchange (ASX) Corporate Governance Principles and Recommendations

This paper looks at the proposed 4th edition of the Australian Stock Exchange (ASX) Corporate Governance Principles and Recommendations – issued in May 2018 by the ASX Corporate Governance Council – which will be released in early 2019. The consultation period closed in July 2018. There has been ongoing debate in relation to some of the proposed changes which represent a dramatic shift in the way listed companies must approach their corporate governance obligations in Australia.

Of particular interest is the proposed re-wording of a listed company's duty to "act ethically and responsibly" which is targeted at its "social licence to operate"

and the need to act lawfully, ethically and in a socially responsible manner to preserve that licence. The ASX Council is of the view that merely acting for the benefit of shareholders is not sufficient and that listed companies must take into consideration the interests of a broader range of stakeholders to "instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner." This follows on from recent policy positions taken by the Australian Securities and Investments Commission (ASIC), Australia's corporate regulatory body, in trying to improve corporate culture in Australia. It is suggested that a "social licence to operate" is inconsistent with corporate law, specifically, the statutory and general law duty of directors to act in the best interests of the company (shareholders) as a whole.

Another controversial proposal is the diversity policy recommendation which sets an explicit target of not less than 30% of directors of each gender on the board within a specified period representing a shift away from aspirational objectives to specific gender quotas on corporate boards. Such gender-based affirmative action may be arguably inconsistent with the above duties.

Dr Ben Saunders

Deakin University

The Public Sector Duty of Care

All Australian jurisdictions impose a duty on directors and other officials of public sector entities to act with reasonable care and diligence in the performance of their functions. This duty is modelled on the duty owed by directors and officers of companies. The private sector duty plays an important role in setting governance standards in the private sector.

This paper examines the effectiveness of the public sector duty of care in setting governance standards across the public sector. It argues that there is some evidence of an emerging standard that officers and directors, and potentially all employees, of all public sector entities should be subject to a duty of care and diligence, but that this standard has received only incomplete recognition in Australian legislation.

I also argue that the public sector duty of care has an uncertain policy rationale, inconsistent coverage across the jurisdictions, faces significant difficulties in interpretation, and lacks effective mechanisms for its enforcement. The consequence is that the duty of care and diligence does not seem to have played a significant role in setting governance standards in the public sector. One result is that there is a significant mismatch between the standards applicable to directors and officers in the private and public sector contexts.

Kym Sheehan

University of Sydney

The Future of Reward: Rethinking Remuneration in Light of Royal Commission into Financial Services

The interim report from the Royal Commission into Financial Services has revealed instances of either misconduct (civil or criminal) or conduct below community standards. One motivating factor highlighted in the interim report is remuneration linked with sales targets. The impact of remuneration practices was not just an executive pay problem: it was a problem across all levels and operations, from the CEO through to the frontline bank tellers. It motivated a range of conduct from falsifying signatures and income figures for clients applying for credit without evidence of client complicity, through to charging fees without providing the services represented by the fees, and depositing small dollar amounts into children's bank accounts so that the branch staff could earn a bonus on these accounts.

With no stated appetite for more laws, this paper examines the scope for existing corporate law and governance frameworks for remuneration to achieve meaningful change in remuneration practices. As remuneration practices are a cultural issue, it presents a model for corporate culture, and then draws upon efforts in the mining industry to instil a safety culture, to show how ethical treatment of clients as a cultural norm and remuneration practices based on profit could work side-by-side.

Peta Spender and Michelle Worthington
Australia National University

Constructing legal personhood: corporate law's legacy

This presentation builds upon recent scholarship regarding the nature of corporate legal personality, exploring in particular the conferral of legal personhood upon natural and synthetic systems (e.g. rivers, algorithms, the market, etc.). The speakers will argue that legal personality may be conceived of as a licensing system, whereby conferral of legal personality is contingent upon the satisfaction of various conditions set by the state. When determining the conditions that should attach to the conferral of legal personality to synthetic systems in particular, the consequences of the law's construction of the corporation as a powerful, and monist ethical agent should be recognised. Ultimately, the speakers will argue that any new categories of legal persons should be developed carefully, and in such a way as to ensure the ascendancy of human interests, both legal and otherwise.

Dr Steven Stern
Victoria University, Melbourne

China's rise is through a form of state owned or controlled corporation: What are its ramifications?

In English common law jurisdictions, statutory corporations are established by Act of Parliament. It has been stated that the number of public authorities that are statutory corporations is being reduced in the modern trend towards privatisation. Does the rise of China challenge this trend? Can China's rise be attributed to a form of state owned or controlled corporation? There is a dominant economic school which maintains that "socialism", a form of publicly owned and centrally planned economy, is uneconomic in its core being devoid of economic rationale providing no means for any objective basis of economic calculation and thus no way to assign resources to their most productive use. China's rise might be seen as demonstrating that it is possible to have the substance of a "socialist" economy by operating through state owned or controlled corporations, which therefore provide some degree of decentralisation and an objective basis for an essential economic calculation assigning resources to productive uses. If such a claim as that the rise of China can be attributed to a form of state-owned or controlled corporation can be substantiated, how might there be a reversal of the trend towards privatisation, which has led in turn to a reduction in the number and roles of statutory corporations? How will any reversal of this trend impact on the modern company? What will be its effect on corporate law? As the structures of the modern company and statutory corporation may well have influenced each other, this paper seeks to provide answers.

Professor Christopher Symes
Adelaide Law School

Possible Futures for the Registered Company Auditor in the Corporations Act and beyond

Auditors have been expressly regulated under Australian companies' statutory law for many years. However, many other pieces of legislation also expressly require an audit to be performed and express who is to perform such work. Auditors must be suitable to carry out the tasks expected and must operate in a regulatory framework, provided by the statute and their professional bodies. Australia is in interesting case study as it has one auditor designation and this is 'Registered Company Auditor'. It has six State governments, two Territories governments and a Federal government all providing legislation that expressly requires a suitable auditor.

There has been a decline in the number of Registered Company Auditors by about a third in the last 15 years. Despite this, the author's research team has identified that there are potential problems with the numbers and geographical distribution of finding such suitable persons and the appropriateness of requiring

a registered company auditor to carry out audits for non-corporate law entities and activities.

In other developments the ASIC Act has changed to alter the body that considers the ongoing appropriateness of registration, the Companies Auditors Disciplinary Board.

This paper contemplates the future for Registered Company Auditors in Australia given the present demands being placed upon them from the corporate law and the non-corporate law statutes.

Lynne Taylor

University of Canterbury

Directors' Duties on Insolvency in New Zealand: An Empirical Analysis

New Zealand company law, like many other jurisdictions, imposes duties on directors that are owed to the company but have creditor protection as their rationale. The success of this strategy depends on at least two factors. The first is whether the drafting and/or interpretation of the duties results in clear and appropriate limits on directors' decision making powers. The second is the extent to which a director in breach of the duties is likely to face enforcement action. Analysis of the content of the duties and the enforcement framework within which they sit predicts that under-enforcement is more likely to be the problematic factor in the New Zealand context. This prediction is largely borne out by the results of an empirical analysis of the case law generated by the creditor protection duties over a 24 year period. However, consistent with international trends, overall results suggest that a further limiting factor may also be relevant, the particular attributes of many directors of companies taking the form of small to medium enterprises. Likely reasons for this and potential reform options are explored.

Avin Tiwari

Cross-Border M&As in Australia, New Zealand and India: A Comparative Analysis

The economic boom in APEC region over the past decades has compelled world economies to look on and take notice. Much of this economic upsurge can be attributed to the increased inflow of FDI by way of cross-border M&A's in the APEC Countries due to rise in making competitive & favourable business environment.

This paper uses macro-economic country wise data from Australia, New Zealand & India to examine the trends of cross-border M&A and analyse in detail as to what factors and indicators have led to such trends. Our hypothetical framework concludes that favourable corporate and tax laws have a directly proportional effect on cross-border M&A's. For instance, a low tax in host country implies high volume of cross-border M&A's and vice versa. The authors analyse the legal framework for cross border M&A's in these three countries to ascertain the legal landscape and forward the cues as to what works and what does not in this form of corporate restructuring and financing.

This paper scrutinizes the effects and role of legal policy on cross-border M&A's activity in Australia, New Zealand & India over the past decade, i.e. 2008-2018. Authors make a solemn attempt to suggest legal and policy measures and a roadmap for increasing FDI for host countries via cross-border M&A's by comparatively analysing the legal regime of powerhouse APEC giants like Australia and New Zealand with that of emerging Asian giants, India.

John Tribe

University of Liverpool

Marxist and Schumpeterian Perspectives on Corporate Insolvency Law: Handmaiden or Bulwark against Creative Destruction?

This paper explores the position of the employee in corporate insolvency law from a Marxist and Schumpeterian perspective.

It is argued that we are dealing with employees as sentient human beings, not commodities within a capitalist system to be exploited as employees. Accordingly corporate insolvency laws should be designed with this key human constituent in mind.

The legal and policy approaches that are critiqued in the paper are ones that exist within the capitalist structure. A central argument of the paper is that those corporate insolvency law provisions should be honed to protect employees whilst capitalism continues as the dominant model. Put another way, amelioration until revolution in the prevailing form of society.

This paper argues that communitarianism within corporate insolvency law goes some way to improve the plight of the hapless employee during Schumpeter's gale of creative destruction. Insolvency tools that reflect communitarianism, such as the English and Welsh administration and company voluntary arrangement procedures, should therefore be harnessed as procedures that protect the interests of employees as a humans not commodities.

Robyn Trubshaw

QUT Business School

Responsibilities within the Governance Space: A study of the role of the company secretary on contemporary boards.

This paper investigates the role construction and challenges of company secretaries supporting contemporary Australian boards. Increased regulation of board transparency has expanded this board support role. The research shows company secretaries accommodate the expansion of responsibilities and transformation of the role from administrator to strategic advisor by using informal activities and developed social skills. Emotional intelligence and boundary spanning activities are required to manage multiple relationships with the chair and other executives. Dual-role company secretaries that is those combining the legal counsel or chief finance officer function in non-profit and government owned organizations are acutely aware of setting the boundaries of responsibilities. The use of informal working spaces opens up the possibility for the company secretary to provide further influence as the organization's gatekeeper.

Casey Waters

Nottingham University Business

Schemes of Arrangement in Singapore: Empirical and Comparative Analyses

The scheme of arrangement has historically been one of the most flexible and popular debt restructuring tools in Singapore and the United Kingdom (UK). Our paper investigates the reasons for the how schemes of arrangement that are used traditionally in the Singapore restructuring market (prior to the 2017 reforms) have been transformed to be effective debt restructuring tools. We further evaluate the success of the schemes of arrangement filed pursuant to the 2017 reforms. In particular, using the dataset of schemes of arrangement filed with the courts between 2005 to 2017 (including those leading to reported unreported judgments), we examine, among other things, how schemes of arrangement are flexible enough to resolve potential outstanding securities claims by investors and shareholders against interested third parties (such as directors and controlling shareholders), so as to enable the settlement of these claims in the wake of a corporate collapse. In relation to the outcomes for the

creditors and/or shareholders, we examine the returns to the creditors and how the creditors fare vis a vis one another and vis a vis the shareholders. Further, we compare how these solutions and outcomes compare with the schemes of arrangement that are filed pursuant to the 2017 reforms.

Professor Susan Watson

University of Auckland

An Eversion in Perspective: The Company viewed as an Entity

Salomon v Salomon & Co Ltd was a watershed case because of the recognition by the House of Lords of the company as an entity legally separate from its shareholders and as a legal person. One of the characteristics shared by companies and corporations in jurisdictions across the world is separation of the legal entity from shareholders, and treatment of the entity by the law as legal persons. Despite this separation the company is commonly viewed from the perspective of shareholders rather than the entity itself. Agency theory, at least as applied in conjunction with the shareholder primacy norm, focuses on shareholders as principal with management as their agents. If we accept that the company is an entity separate from its shareholders shouldn't the future focus of corporate law and governance be on the entity itself?

This paper argues for an eversion in thinking; for a shift in perspective from shareholders and other corporate constituents to viewing the company from the perspective of the entity itself. The consequences of this approach for the future and the company and corporate law are considered.

Professor Michelle Welsh

Monash University

Director Restriction: An Alternative to Disqualification for Corporate Insolvency

Provisions that allow for the disqualification of directors who are involved in multiple corporate failures have been adopted by legislatures in many jurisdictions. Underlying the disqualification power is a tension between the right of companies to manage their own internal affairs, including the appointment of directors of their choosing, and the government's obligation to protect 'the public', which in this case is future creditors. A related tension arises between the rights of individuals to hold directorships and the right of the public to protection from potential losses that may flow from the mismanagement of companies by those individuals.

Imposing restrictions on directors is more easily justified where the director has broken the law. However, it is arguable that creditors need to be protected not only from fraudulent or dishonest directors but also from incompetent directors. It makes little difference to creditors whether their bills are not paid because of illegality or ineptitude. This paper argues that Australia's present insolvency disqualification regime is failing to protect the public for a number of reasons, including that the present grounds for disqualification do not appear to capture incompetence. A way needs to be found to reconcile the need to protect future creditors, on the one hand, and the rights of persons to manage companies in the absence of wrongdoing, on the other. This paper proposes the introduction of a new regulatory tool - 'restricted directorships' - which has the potential to limit the harm that persons who are involved in multiple corporate failures can cause. The proposed regime represents a compromise between an unlimited number of directorships and complete disqualification from managing corporations.

Dr Chuanman You

The Future of Market for Corporate control in China

This main theme of this paper is to examine, in a market of changing balances in power, how does the regulatory force – the visible hand, interact with the market force – the invisible hand, and why. The paper applies an "institutional autopsy" approach to investigate an extraordinary firm level event in China's controlled corporation world: the hostile takeover battle between the Baoneng Group and the China Vanke Co., Ltd. (2015-2017). Chinese M&A market has topped the global chart in the past decade. Hostile takeovers, however, have been rather unnoticeable. Since the first takeover bid for the Yanzhong Plc. By the Bao'an Yanzhong Plc in 1993, there have been no more than dozens of takeover battles recorded. The year of 2015, however, witnesses the inception of China's "highest-ever profile takeover battle". Although the buccaneer outsider was eventually kept off the shore, their dynamism and ruthlessness as a new breed of financiers put into a great stress test not only the endurance of industrial establishments, but also the adaptability of regulatory authorities to significant market developments.

This paper askes the following questions: What factors, political and/or economic, instigated this takeover battle? What tactics have the main protagonists mounted against each other in the battle? How did their ingenious tactics comply, if at all, with the existing takeover rules? How and why has the regulators' response shifted from maintaining a rather neutral position to despising the takeover bid for being politically undesirable and economically harmful? How has the takeover rules evolved as a consequence? What implications can we draw from this autopsy analysis on China's capital market development?

This real event study will have significant contribution to advance the understanding of the future for the company and for corporate law in China. It will illustrate how takeover rules evolve in response to significant new market developments; it will shed lights on the dynamics of interaction between the demand side and the supply side of corporate regulation; it will provide an intellectual roadmap for understanding law and development of China's capital market.

This autopsy analysis will also contribute to the divergence/convergence debate within the comparative corporate governance scholarship. A comparative examination on China's law and development will attest to the path dependent phenomenon regarding a country's corporate governance system. Therefore, the multiple regulatory equilibria will remain across different jurisdictions.

Dr Charles Zhen Qu

City University of Hong Kong

Corporate Law Issue, Private Law Solutions: Resolving Disputes Arising from Corporate Security Contracts under PRC Law

One of the difficult tasks facing the PRC courts is how to resolve disputes arising from unauthorised corporate contracts that gives a security. Courts need to make decisions according to rules that provide for third parties' rights. For the PRC courts, however, there is a shortage of applicable rules. The differentiation that the PRC law makes between the treatment of ordinary agents and a company's "Legal Representative" (LR) raises a question on the applicability of the rules on "agency without authority" in resolving the issue raised. A company law provision enacted to regulate corporate security contracts (Company Law article 16) has arguably neutered the provisions on apparent authority. This project discovers and evaluates how China's High People's Courts (HPCs) have resolved the issue raised. It also makes suggestions on the adjudicatory approaches that make better sense in the context of the PRC legal system. The discovery is made from data collected in case reports on art 16 disputes listed in a respected legal information database, namely pkulaw. The information collected shows that in most of the cases HPCs have allocated the risks for corporate security contracts to the putative corporate surety through approaches that cannot be justified on either the doctrinal or the policy level. The proposal is made through a consideration of the ways in which the same issue is resolved in the other two jurisdictions where the LR or similar system is also adopted, namely Japan and Taiwan.

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